



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

DEC 12 2011

Ref: 12-F-0243
DoN: 2011F051255
SOCOM: 2011-104

Mr. Aaron Swartz
185 Beacon St. #3
Somerville, MA 02143

Dear Mr. Swartz:

This is the final response to your Freedom of Information Act request dated May 3, 2011, which you submitted to the Department of the Navy, which was further referred to the U.S. Special Operations Command for, "any photos or videos from the 2011 operation to capture or kill Osama bin Laden in Abbottabad, Pakistan." The Department of Defense holds no records responsive to your request. The enclosed declaration by William T. Kammer, filed in the U.S. District Court for the District of Columbia, *Judicial Watch, INC v. U.S. Department of Defense, et al.*, provides further explanation of this response.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 12-F-0243, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Jacobsmeyer", is written over a circular stamp that is partially visible and mostly obscured by the signature.

Paul J. Jacobsmeyer
Chief

Enclosure:
As stated

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.

Plaintiff

v.

U.S. DEPARTMENT OF DEFENSE, et al.,

Defendants

Civil Action No. 1:11-cv-00890-JEB

DECLARATION OF WILLIAM T. KAMMER

I, William T. Kammer, hereby declare under penalty of perjury that the following information is true and correct:

1. I am the Chief, Freedom of Information Division (FOID), Executive Services Directorate, Washington Headquarters Service, a Component of the Department of Defense (DoD), and have held that position since August 2005. As Chief, I am responsible for implementation of the DoD Freedom of Information Act (FOIA) Program and issuance of agency-wide policy guidance and instruction on FOIA matters. See 32 CFR 286. Additionally, I supervise the processing of initial FOIA requests for documents within the possession and control of the Office of the Secretary of Defense (OSD) and the Office of the Chairman of the Joint Chiefs of Staff (OCJCS). Within FOID, the Office of Freedom of Information (OFOI) processes FOIA requests for OSD/OCJCS. Also within FOID is the Defense Freedom of Information Policy Office (DFOIPO), which is responsible for the processing of FOIA appeals

for the OSD, the Joint Staff, and the Combatant Commands, including the U.S. Special Operations Command (USSOCOM). DFOIPO is also responsible for providing FOIA policy guidance and direction for the DoD FOIA Program.

2. I am familiar with the subject litigation and the FOIA request submitted by plaintiff in this case. The statements in this declaration are based upon my personal knowledge, upon my review of information available to me in my official capacity, and upon my conclusions.

3. On May 3, 2011, OFOI received a FOIA request from plaintiff dated May 2, 2011. The request asked for "all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011." OFOI interpreted this request as referring to the operation conducted by United States forces that resulted in the death of Osama bin Laden on or about 1 May 2011. See Exhibit 1. On May 9, 2011, OFOI provided an interim response to plaintiff, advising plaintiff that due to unusual circumstances, it would be unable to make a release determination within the 20-day statutory period. See Exhibit 2. Plaintiff filed its complaint on May 13, 2011.

4. OFOI determined that the DoD Components likely to have records responsive to plaintiff's FOIA request were the OCJCS, USSOCOM, and the Department of the Navy.

5. Within the OCJCS, a single action officer in the Directorate for Global Operations maintained all documents related to the operation. This action officer searched all hard copy records and the only stand alone computer used to store electronic records, and no responsive records were located. Additionally, the email files of the Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, were searched and no responsive records were located. This search was conducted by the Joint Staff Office of the Chief Information Officer (JS/OCIO). JS/OCIO searched the active inbox on the Exchange server and all supporting personal storage table files

within Admiral Mullen's profile on the Secure Internet Protocol Router network. The search was limited to emails dated May 1, 2011 through May 31, 2011.

6. The mission of USSOCOM is to provide Special Operations Forces to defend the United States and its interests. A priority of USSOCOM is to "Deter, Disrupt, and Defeat Terrorist Threats," and a primary aspect of this priority is to plan and conduct special operations. When a special operation is conducted, the military service Components of USSOCOM (U.S. Army Special Operations Command, Navy Special Warfare Command, U.S. Air Force Special Operations Command, and Marine Corps Special Operations Command) provide Special Operations Forces (personnel and equipment) to the operation. Accordingly, it is DoD FOIA policy that documents created or maintained by these military service Components during or for a joint special operation come under the cognizance of USSOCOM and not the military services for purposes of the FOIA. Therefore, USSOCOM and not the military services, is responsible for the searches of records responsive to plaintiff's FOIA request at those service components that may have participated in the subject operation.

7. USSOCOM searched the Headquarters and relevant Components, and no records responsive to plaintiff's request were located. The specific filing systems searched at the Headquarters USSOCOM offices and relevant Components were all hard copy and electronic records including all email records during the inclusive dates of May 1, 2011, through May 31, 2011.

8. Because the body of Osama bin Laden was buried at sea from the U.S. Navy aircraft carrier USS Carl Vinson, OFOI coordinated with Commander, Naval Air Forces, U.S. Pacific Fleet, (COMNAVAIRPAC) on obtaining a search for responsive records on the USS Carl Vinson. COMNAVAIRPAC advises that although no USS Carl Vinson personnel took any photographs or videos of the burial, emails in the ship's computers system discussing the

operation were looked at in an effort to identify any mention of responsive video recordings or photographs. This effort did not reveal evidence of any such video recordings or photographs on the USS Carl Vinson.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 22nd day of September 2011, at Alexandria, Virginia.

William T. Kammer

William T. Kammer

Exhibit

1

Exhibit

1



**Judicial
Watch®**
*Because no one
is above the law!*

11-F-0931

May 2, 2011

VIA CERTIFIED MAIL & FACSIMILE (703-696-4506)

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the U.S. Department of Defense produce, within twenty (20) business days, all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011.

Judicial Watch also requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under the OPEN Government Act of 2007, Section 6(b).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of

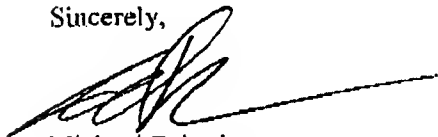
425 Third St., SW, Suite 800, Washington, DC 20024 Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 Email: info@JudicialWatch.org www.JudicialWatch.org

May 2, 2011
Page 2 of 2

search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or mbekesha@judicialwatch.org. Thank you for your cooperation.

Sincerely,



Michael Bekesha
Judicial Watch, Inc.

425 Third St., SW, Suite 800, Washington, DC 20024 Tel: (202) 646-5172 or 1-888-593-8442
FAX: (202) 646-5199 Email: info@JudicialWatch.org www.JudicialWatch.org

Exhibit

2



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

MAY 09 2011

Ref: 11-F-0931

Mr. Michael Bekesha
Judicial Watch
425 Third Street, SW
Suite 800
Washington, DC 20024

Dear Mr. Bekesha:

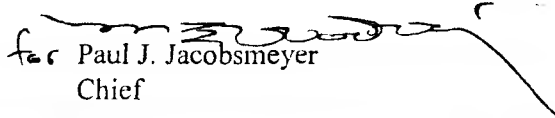
This is an interim response to your May 2, 2011, Freedom of Information Act (FOIA) request for, "all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011." You have also requested a waiver of search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) & (iii) as a member of the news media. Your request has been assigned FOIA case number 11-F-0931.

Prior to you submitting your request, this Office received multiple FOIA requests from several representatives of the news media for these records; thus, you will not incur charges associated with this FOIA request. As a result, your request for a fee waiver in this instance is moot.

At this time, we are unable to make a release determination on your request within the 20-day statutory time period. Although the FOIA contains provisions for an extension of 10 more business days, that additional time will not be sufficient to complete the work required to process your request and arrive at a final release decision. There are unusual circumstances which impact our ability to quickly process your request. They are: the volume of requests received concerning the death of Osama bin Laden; the need to coordinate searches for records with multiple offices; and the requirement to coordinate the review of records with more than one office or organization having a substantial interest in either the determination or the subject matter of the records. As a matter of information, our current administrative workload is approximately 1,360 open requests. ~~I apologize for the anticipated delay in responding to your request, but due to the complexity of the request this Office is unable to estimate when the processing of this request will be completed.~~ Your continued patience is appreciated.

If you are not satisfied with this action, you may appeal to the appellate authority, the ~~Director~~ of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20101-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 11-F-0931, and should be clearly marked "Freedom of Information Act Appeal".

Sincerely,


for Paul J. Jacobsmeyer
Chief